

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed amendments) NOTICE OF PROPOSED
of ARM 23.17.101, and 23.17.103 through) AMENDMENTS
23.17.108, regarding MLEA attendance,)
23.17.311 through 23.17.314, and 23.17.316,) NO PUBLIC HEARING
regarding MLEA performance criteria) CONTEMPLATED

TO: All Concerned Persons

1. On November 6, 2006, the Montana Department of Justice proposes to amend the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on October 30, 2006, to advise us of the nature of the accommodation that you need. Please contact Jon Ellingson, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jellingson@mt.gov.

3. The rules as proposed to be amended provide as follows, matter to be added underlined, matter to be deleted is interlined:

23.17.101 REQUIREMENTS FOR SWORN PEACE OFFICERS AND PUBLIC SAFETY OFFICERS TO ATTEND BASIC PROGRAMS (1) An applicant to attend MLEA basic programs must be employed by a law enforcement or public safety agency within the state of Montana as a peace officer, ~~detention officer, or a reserve officer, as defined in 7-32-303, MCA; 44-4-302(3), MCA; and 7-32-201(5), MCA.~~ or public safety officer. For purposes of this rule:

(a) a peace officer is defined by 7-32-303(1), 61-10-154(5), and 61-12-201, MCA;

(b) a reserve officer is defined by 7-32-201(5), MCA; and

(c) a public safety officer shall mean the following (which are defined in 7-4-2901, 7-4-2904, 7-4-2905, 7-31-203, 41-5-1701 through 41-5-1706, 44-4-302 through 44-4-305, and 46-23-1003 through 46-23-1005, MCA):

(i) a detention officer;

(ii) a corrections officer;

(iii) a juvenile detention officer;

(iv) a juvenile corrections officer;

(v) a public safety communications officer;

(vi) a detention center administrator;

(vii) a juvenile probation officer;

(viii) a juvenile parole officer;

(ix) an adult probation and parole officer;

- (x) a misdemeanor probation officer;
- (xi) county coroners; or
- (xii) deputy county coroners.

(2) ~~Applicants will~~ Each law enforcement officer basic course applicant shall first be required to pass a physical fitness test developed by the department. An applicant who has passed the test shall be accepted on a first come, first served basis. If the specific course roster that an applicant applies to attend has been filled, the applicant will be placed on a waiting list for that course and also placed on the roster for the next available course. To meet statewide needs, the academy administrator may adjust the placement of applicants to certain course rosters.

(3) Reserve officers, ~~or detention officers~~ peace officers, or public safety officers who apply to attend ~~the peace officer basic courses~~ must meet the qualifications and requirements for preservice applicants.

AUTH: 44-10-202, MCA
IMP: 44-10-301, MCA

REASON: This amendment broadens and clarifies who may attend the basic program at the Montana Law Enforcement Academy. The existing rule was adopted when the academy only trained law enforcement officers. The academy now trains a wide range of public safety officers. This amendment is necessary to accurately reflect the broader mission of the academy. In order to prevent unreasonable attrition, to prevent injury during participation, and to successfully complete performance-based training at the academy, each law enforcement officer basic course applicant needs to take and pass a physical fitness test before admission.

23.17.103 PEACE OFFICER BASIC COURSE ATTENDANCE

REQUIREMENTS FOR PRESERVICE APPLICANTS (1) Preservice applicants are persons not employed as full-time or part-time bona fide ~~law enforcement~~ peace officers and public safety officers. Preservice applicants shall be selected to attend the MLEA basic course based on their ability to meet minimum qualifications. This includes successfully completing the pretest screening, a written and physical ability test, and posttest screening. Successful applicants will be ranked in accordance with ARM 23.17.107. Scheduled attendance by the successful applicants to the basic course will be by order of rank from the applicant list and by course availability. Preservice applicants scheduled to attend the basic course shall receive reporting instructions and other information from the academy administrator. ~~Qualified pre-service applicants to the basic course are not qualified to be accepted into any other basic programs presented at the law enforcement academy.~~

AUTH: 44-10-202, MCA
IMP: 44-10-301, MCA

REASON: This amendment defines the requirements for preservice applicants to the MLEA basic course in a manner consistent with the proposed amendment to ARM 23.17.101. The existing rule was adopted when the program was limited to

law enforcement officers. The amendment defines "preservice" applicants in a manner consistent with the proposed amendments to ARM 23.17.101.

23.17.104 MINIMUM QUALIFICATIONS FOR TESTING AND PRETEST SCREENING (1) Preservice applicants must meet the minimum qualifications for peace officers or public safety officers as stated in 7-32-303, MCA, with the following exceptions:

(a) through (2) remain the same.

(3) Upon receiving an application and prior to acceptance, the academy will conduct a criminal history and preemployment records check. ~~before the applicant is tested.~~

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

REASON: This amendment specifically adds a criminal history and preemployment records check to be conducted prior to acceptance by the MLEA. It is more efficient to conduct the criminal history and preemployment background check after the applicant has been tested and found to meet the minimum qualifications for admission. The current rule requires these background checks to be conducted of each applicant as soon as the application is submitted and before a determination is made that the applicant meets the minimum qualifications for admission.

23.17.105 TESTING PROCEDURES (1) remains the same.

(2) The preservice applicant tests shall consist of ~~the P.O.S.T. J-2 multi-jurisdictional peace officer selection test, the P.O.S.T. R-2 law enforcement officer reading skill examination, the P.O.S.T. W-2 multi-jurisdictional peace officer writing skills examination and the P.O.S.T. Montana law enforcement physical ability test~~ a written examination that measures general aptitudes, reading, and writing skills. A copy of the test used will be filed annually with POST.

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

REASON: This amendment broadens the ability of the MLEA to use the examinations that the administration feels are best suited to test applicants. The examinations listed in the current rule are over 20 years old. The academy needs to have the ability to use the best testing procedures that are currently available.

23.17.106 POSTTEST SCREENING PROCEDURES (1) and (2) remain the same.

(3) The academy administrator or designee shall conduct criminal history, prior employment, and character and background checks on each applicant selected for posttest screening.

(4) An oral interview board shall be created consisting of the academy administrator, ~~the basic programs bureau chief,~~ or designee, a representative of a

county sheriff's department office, a representative of a municipal police department, and a member of the general public.

(a) An alternate representative of a county sheriff's department office, representative of a municipal police department, and a member of the general public will also be appointed to serve whenever a representative person is unable to attend an interview. All appointments to the board shall be made by the academy administrator and confirmed by the POST advisory council.

(5) through (7) remain the same.

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

REASON: This amendment allows the administrator to designate another individual to serve for the administrator on the oral interview board. The responsibilities of the academy administrator will often prevent him/her from conducting the background checks on each individual applicant. The administrator needs to be able to designate another to perform these tasks. Similarly, the administrator cannot always participate in an oral review board. When he/she cannot, another person needs to be designated by the administrator to serve in that capacity.

23.17.107 RANKING OF PRESERVICE APPLICANTS FOR ELIGIBILITY TO ATTEND THE BASIC COURSE (1) Preservice applicants who pass the ~~J-2, R-2, W-2~~ written tests shall be ranked according to the sum total of the ~~three~~ scores achieved in ~~these the~~ tests and this score shall be converted to a percentage of the total possible score ~~on all three tests of 207. Total possible percentage points will be~~ 100.

(2) through (5) remain the same.

(6) This ranking is meant only to qualify the applicants for attending the MLEA basic course and is not meant to qualify these individuals for employment as peace officers or public safety officers.

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

REASON: This amendment is necessary to provide consistency with the proposed amendments to ARM 23.17.101 and 23.17.105.

23.17.108 PROCEDURES FOR REGISTRATION, ATTENDANCE, AND FEES FOR PRESERVICE APPLICANTS (1) through (5) remain the same.

(6) A \$2,000 tuition fee, together with payment for meals, and room, necessary uniforms, equipment, and supplies, will be required from each preservice applicant to be paid in full by the first day of the basic course session to be attended. Proof of tuition subsidies, grants, or scholarships will be accepted in lieu of cash payment.

(7) through (9) remain the same.

AUTH: 44-10-202, MCA

IMP: 44-10-202, 44-10-301, MCA

REASON: This amendment allows the collection of payment for lodging and equipment by the first day of the basic course to be attended. The current rule does not expressly allow for the collection of equipment and room fees by the first day of the basic course. The amendment allows for the collection of these fees and is necessary for the efficient management of the costs of operating the academy.

23.17.311 STUDENT ACADEMIC PERFORMANCE REQUIREMENTS FOR THE BASIC COURSE (1) A student must achieve a final grade score of 75% of a ~~the total possible 100% as required by ARM 23.14.413 to pass the course. The total possible score is based on the following criteria:~~ points that can be accumulated for all graded examinations, exercises, and assignments.

- ~~(a) weekly spelling exams, 10% of final grade;~~
- ~~(b) notebook grade, 10% of final grade;~~
- ~~(c) other exams, 10% of final grade;~~
- ~~(d) mid-term exam, 30% of final grade;~~
- ~~(e) final exam, 40% of final grade.~~

(2) The total accumulative points possible for each basic course shall be filed with the POST advisory council in conjunction with the annual review of the curriculums as prescribed in ARM 23.14.416(3).

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

REASON: This amendment gives the administration of the MLEA greater flexibility in weighting the components used in determining the final grade of a student. This amendment is necessary to allow the academy to modernize its testing procedures to reflect current methodologies in testing and evaluating its students.

23.17.312 OTHER STUDENT PERFORMANCE MEASURES (1) remains the same.

(a) the scores ~~will not~~ may be part of the final grade, ~~but will~~ and can be used to establish class ranking of the student;

(b) and (c) remain the same.

(2) Performance evaluations will be conducted on a ~~weekly~~ regular basis by the academy administrator or their designee. Performance evaluations will be summarized orally and in writing and will be based upon the following behavioral categories:

(a) through (4) remain the same.

(a) a total of three "needs to improve" evaluations in any one specific category or a total of any two "not acceptable" evaluations will result in a corrective action plan, or could result in immediate dismissal from the basic course by the academy administrator.

(5) A copy of the written summary of a student's performance evaluation will be provided to the student ~~each week,~~ and to the student's agency administrator

when applicable, and to any potential employer who inquires. A copy will be kept on file in the student's record maintained by the academy administrator.

AUTH: 44-10-202, MCA
IMP: 44-10-202, MCA

REASON: This amendment gives the administration greater flexibility in evaluating other student performance measures and defining appropriate consequences. The administration needs the discretion to include other performance measures beside the final grade to accurately determine class rank. Performance evaluations cannot efficiently be conducted on a weekly basis and the amendment allows the evaluations to be conducted on a regular basis as determined by the administration. The academy administrator cannot fulfill his/her other responsibilities and personally conduct regularly performance evaluations. The amendment allows the administrator to designate another to conduct this testing. The existing rule requires one set response to deficient performance under section (4)(a). If the individual circumstances warrant it, the administrator needs additional flexibility to devise a corrective plan that is short of immediate dismissal.

23.17.313 MLEA FIREARMS PERFORMANCE REQUIREMENTS FOR THE LAW ENFORCEMENT OFFICER BASIC COURSE (1) A student must achieve a ~~qualification passing score of not less than eighty (80) percent of a possible 100 percent~~ in the MLEA firearms ~~qualification training~~ course.

(2) The total accumulative points possible for the firearms training course shall be filed with the POST advisory council in conjunction with the annual review of the curriculums as prescribed in ARM 23.14.416(3).

AUTH: 44-10-202, MCA
IMP: 44-10-202, MCA

REASON: This amendment provides the administration with greater flexibility in determining a passing score in the MLEA firearms training course. The administration needs this flexibility to enable it to modify and update firearm proficiency tests to reflect the best current testing methods.

23.17.314 PHYSICAL PERFORMANCE REQUIREMENTS FOR THE LAW ENFORCEMENT OFFICER BASIC COURSE (1) remains the same.

(2) A student may request a substitution for any of the above physical tests, but before any substitution is granted, the request will be reviewed by the academy ~~and the POST advisory council~~ administrator. The student may be asked to provide medical records documenting the need for the substitution, and these medical records may be submitted for review by a physician designated by the academy before any request for substitution is granted.

(3) A ~~manual document~~ document detailing fitness ~~standards~~ requirements, academy expectations, and student preparation procedures will be furnished to all students who register for the basic course.

(4) Student performance will be measured at the following times during ~~and/or before the basic course~~: These testing times may consist of the following:

(a) entry fitness assessment during week one test within 40 days of the start of the basic course;

(b) midterm fitness assessment during week five test; and

(c) final fitness assessment during week ten test.

(5) Students who arrive at the academy with an injury or condition that prevents them from attempting ~~the entry~~ any of the prescribed fitness assessment tests will not be allowed to complete the basic course.

(6) ~~At the midterm and final prescribed fitness assessments tests, the student must pass every physical test, by placing in the fortieth (40th) percentile of the national norms as defined by the institute of aerobics research, Dallas, Texas. At the midterm and final fitness assessments,~~ meeting the required levels of performance as prescribed by administrative policy. ~~s~~Students who fail to meet 40th percentile the required performance standards levels will be given one opportunity for retest in all four physical tests within ten business days of the posted date of failure. Failure to pass the prescribed physical fitness test may result in expulsion or termination from the basic course.

(7) ~~All basic course students must successfully complete the midterm fitness assessment. Students who fail to perform to 40th percentile performance standards during the midterm fitness assessment expelled or terminated due to failure of the physical fitness tests may will be dropped from the basic course session and may be required to reapply to complete a future session of the entire ten-week course. Students who fail to perform to 40th percentile performance standards during the midterm fitness assessment will be notified that they may be allowed to return to the academy within six months to complete only the remaining five weeks of training if:~~

~~(a) the student reapplies to complete the last five weeks of basic course training before the end of the original basic course session;~~

~~(b) the student's agency training officer meets with the academy administrator to discuss fitness performance and other aspects of student performance during the first half of the basic course;~~

~~(c) the academy and the affected agency negotiate and develop a plan to manage the student's fitness performance problems, keep the student's initial basic training updated, match the portions of the curriculum that are missed to those that will be taken, account for any increased costs which will arise as a result of the student's return and schedule attendance in accordance with the current basic course waiting list; and~~

~~(d) the student completes the academy midterm fitness assessment to 40th percentile performance standards immediately upon return to the last half of the basic course.~~

(8) ~~Students who fail to complete the midterm fitness assessment because of an injury or an illness which occurs during the basic course may be allowed to continue in the basic course subject to:~~

~~(a) compliance with all reporting guidelines as detailed in the student handbook;~~

~~(b) a case-by-case review of the circumstances surrounding the incident during which an injury occurred; and~~

~~(c) medical review completed by a physician approved by the academy.~~

~~(9) (8) All basic course students must successfully complete the final fitness assessment test in order to complete the basic course and attend graduation. Students who successfully complete the midterm fitness assessment but fail the final fitness assessment test will be given one opportunity for retest within six months of the course completion date ten business days of the posted date of failure. Failure to successfully complete a retest within six months ten business days of the posted date of failure or failure to meet the fitness requirements upon reentry of the next successive basic course, will require reapplication and completion of the entire ten-week basic course.~~

~~(10) When an injury occurs subject to the guidelines noted in ARM 23.17.314(8), students who have completed either the entry fitness assessment or the midterm fitness assessment to 40th percentile performance standards but who do not attempt the final fitness assessment because of the injury will be allowed to attend graduation but will not be issued a diploma and will be required to return for a retest within six months. Injured students who never complete any fitness assessment to 40th percentile performance standards will not be allowed to attend graduation but may be allowed to retest within six months.~~

AUTH: 44-10-102, 44-10-202, MCA

IMP: 44-10-102, 44-10-202, MCA

REASON: This amendment provides greater flexibility to the administration in determining and using the tests that will best evaluate the physical performance of the students. The existing fitness standards focus on requirements for employment. The proposed amendments will allow the academy to develop individualized performance measures that are based on the training requirements at the academy. The administration needs the greater flexibility provided by the amendments to deal with individual students and circumstances on a case-by-case basis in an effort to retain some students who would otherwise have been terminated or expelled under the existing rules. The administration also needs the ability provided by the amendments to develop and revise from time to time the grade that will be considered a passing grade on the physical fitness tests.

23.17.316 BASIC COURSE ACHIEVEMENT AWARDS (1) remains the same.

(2) Additional awards may be presented, when authorized by the academy administrator, for recognition of excellence or outstanding performance.

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

REASON: This amendment allows the administration to make awards in addition to those specifically listed when the circumstances justify it. The existing awards listed in the rules do not encompass all of the categories that merit recognition at the academy. The amendment is needed to allow the administrator to make awards in addition to those specifically provided by the current rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments in writing to Jon Ellingson, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, fax (406) 444-3549; or e-mail jellingson@mt.gov, and must be received no later than November 2, 2006.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Jon Ellingson, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, fax (406) 444-3549; or e-mail jellingson@mt.gov. A written request for hearing must be received no later than November 2, 2006.

6. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action(s); from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Board of Crime Control, Consumer Protection, Crime Lab, Fire Prevention/Investigation, Forensic Science Division, Gambling Control Division, Highway Patrol Division, Law Enforcement Academy, Law Enforcement Services, Motor Carriers, and Motor Vehicle Division, or any combination thereof. Such written request may be mailed or delivered to Jon Ellingson, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Jon Ellingson, e-mailed to jellingson@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General
Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State September 25, 2006.